

IN THE MATTER OF ARBITRATION
BETWEEN

2010 SEP -9 PM 1:46

Ohio State Troopers Association
Union

And

15-03-20091013-137-04-01
10 Day Suspension
Kyla Walker (Chalfant)

Ohio Department of Public Safety
Employer

UMPIRE'S DECISION AND AWARD

Appearances:

For the Union:
Elaine Silveira. Esq.

For the Patrol
Lt Kevin D. Miller

Sandra Mendel Furman, Esq. Umpire

INTRODUCTION

This matter was heard before the undersigned on August 26, 2010 in Columbus, Ohio at the OSTA offices.

Grievant and Laura Windbigler testified on behalf of the Union. OSTA President Larry Phillips and Staff Representative Dave Riley were present. Union Attorney Elaine Silveira represented the OSTA as counsel.

The Ohio Department of Public Safety (Patrol) called Dispatcher Reichelderfer and Lt. Chuck Jones as witnesses. The Patrol was represented by Lt. Kevin Miller. Sgt Anne Ralston and Lt. Charles Linek (Patrol) and Marissa Hartley (OCB) were present.

The collective bargaining agreement (cba) was Jt Ex 1; Jt Ex. 2 -the grievance trail; Jt. Ex. 3- The disciplinary package consisting of the statement of charges; the pre disciplinary notice; the meeting Officer response; the suspension letter, department record; and ODPS work rule 501.01©(10)(b) Neglect of Duty. Each side provided additional exhibits in support of its respective position. These additional exhibits are referred to in the discussion below.

There was a procedural arbitrability argument presented. The Patrol argued that the grievance was untimely filed and sought the matter to be dismissed without a hearing on the merits. The Union responded that this argument had been waived due to failure to raise it at Step 2. The arbitrator ruled at the hearing after consideration of the parties' arguments that the timeliness argument had been waived.

A motion for separation of witnesses was granted. Each side was given a full opportunity to call two witnesses (limitation opposed by the CBA), cross-examine witnesses and present relevant materials in support of its position. All witnesses were sworn. The hearing was closed after oral closing arguments.

ISSUE

Was the Grievant issued a 10 day suspension for just cause? If not, what shall the remedy be?

APPLICABLE CONTRACT SECTIONS:

Article 19 Disciplinary Procedure

Article 20 Grievance Procedure

20.08

5. Limitations of the Umpire ...

The umpire shall have no power to add to, subtract from or modify any of the terms of this Agreement...

STATEMENT OF FACTS:

There is no significant factual dispute. Grievant is employed as a Dispatcher at the Bucyrus Dispatch Center for the Patrol. The Center covers a multi county area including Morrow and Marion County. Grievant was assigned to first shift from 7am -3pm. At 1:56pm May 21, 2009 a call came in from the Marion County Sheriff Department reporting an accident at 1623 SR95 Marion County. Grievant dispatched Sgt Fraley (Unit 560) from the Marion post. The call from Trooper Fraley on site indicated a need for an AAA truck.¹ Fraley's radio call was reviewed and verified. Walker acknowledged the call with an "OK". At that point in her work shift she was working alone and responsible for multiple counties dispatches.

Grievant failed to enter the AAA tow request into the CAD.² She also failed to select the correct county location for the crash. Walker entered Morrow County instead of Marion County. Grievant failed to catch the mistakes even though the trooper calling in from the crash was from Marion County. She failed to note that the names that appeared when she selected the Morrow County location on the computer screen were Mt Gilead not Marion Post troopers.

A non AAA affiliated tow truck based in Mt Gilead (Morrow County) was dispatched to the accident scene under the established tow truck response

¹ A response from AAA would have been at minimal or no cost to the citizen.

² There are several opportunities to enter AAA on the screen shots on the CAD. Due to her error no such entries existed for this crash.

rotation system. The tow truck driver went to the correct address because Grievant spoke directly to him.

The affected party in the accident complained at the scene and to the Dispatch Center by telephone that he had asked for AAA towing. The responding tow truck operator would not leave the area. A phone call back to the Post failed to resolve the dilemma. The discussion involved Dispatcher Rothaar who had relieved Grievant and Grievant's supervisor Reichelderfer. The Dispatcher Supervisor next conferred with Sergeant Day. It was decided that due to lack of documentation of the AAA request the private operator could continue his work. The tow truck operator had indicated that it was the driver who had changed his mind at the scene and that he wasn't leaving. The private operator completed the tow and billed the driver.

The driver's mother called the Dispatch Center later that same afternoon to complain about the perceived lack of cooperation on the AAA towing issue. She paid the tow bill in the amount of \$459.67.³

An administrative investigation (AI) was conducted by Lt. Chuck Jones. Patrol Ex.1.

Walker admitted that she entered the wrong county. She stated that she didn't hear Trooper Fraley state an AAA tow truck was needed. She was aware of the proper procedures for requesting an AAA affiliated tow truck.

A special evaluation performed in March 2008 noted an incident where Walker contacted a similar sounding named towing company in error. The error resulted in greater expense to the affected citizen. The goal "Improve communications to make sure that adequate information is obtained in a timely and accurate manner" was stated and acknowledged by Grievant.

Grievant's annual evaluation for 2008 indicated she had received an unsatisfactory rating. There was specific attention addressed to her mastery and skills of the radio traffic. ("She fails to document radio traffic ..." "She fails to

³ There was some uncertainty as to whether AAA ultimately reimbursed for the cost of the tow. Oral testimony and the written documents were at odds. This fact is not relevant to the ultimate disposition of the matter. The issue is was Grievant in neglect of duty by her actions that date and if so was the punishment appropriate?

double check her work which would eliminate many of the errors.”) The goal was set to “Improve communications to make sure that adequate information is obtained in a timely and accurate manner.” Patrol Ex. 3. Grievant received additional training and special assistance directly from Reichelderfer on dispatching issues relating to terminology and proper use of the CAD. This training occurred in December 2007-March 2008. Reichelderfer worked with Walker on a one to one basis. She had been counseled Grievant on numerous occasions regarding job performance.

At the date of hearing Grievant was performing at a satisfactory level. Walker was no longer on a special evaluation schedule. Within the two months preceding hearing she had an incomplete CAD entry.

Grievant received a ten (10) day suspension effective September 20, 2009 for neglect of duty.

Grievant’s deportment record indicates the following prior suspensions: 1 day; 3 day; 5 day and a written reprimand. The 3 day suspension related to a failure to note a felony on the CAD. The other discipline noted related to sleeping on duty.

PATROL POSITION

The Patrol met its burden of proof. Grievant failed to send an AAA tow truck as requested. Grievant entered the wrong county on the CAD. Grievant failed to catch the error in time. The error cost a citizen unnecessary expense. The Union’s efforts to shift the blame to supervisors Reichelderfer and/or the Sgt. on duty should not be credited. The blame and fault are Grievant’s alone.

Grievant has been counseled and disciplined in the past for errors related to job performance. Grievant is a relatively short term employee with a poor deportment record. The discipline is not punitive. The discipline is corrective.

The grievance should be denied.

UNION POSITION

Grievant admitted her mistake. Errors such as the one made by Grievant are not uncommon. This was a minor mistake. Grievant simply didn’t hear

Trooper Fraley request AAA so her acknowledgement of "OK" was correct under her perceived understanding.

Grievant has been treated in a disparate manner.

The dispatcher area is stressful. Grievant was covering multiple posts due to the absence of the other dispatcher. It was close to shift change when things are especially hectic.

A recent Patrol study (DISCOM) indicated that 89% of the time wrong maps appear on the system.

The Patrol compounded the problem by a series of persons failing to correct the erroneous dispatch. Two supervisors involved failed to "make it right" by sending back the non AAA truck. These other persons received no discipline. The tow truck driver overcharged the customer. That is not Grievant's fault.

The discipline is too harsh even if it was progressive. The discipline is not commensurate with the offense.

The grievance must be granted.

DECISION AND AWARD

The arbitrator finds the Union defense of disparate treatment insufficient to modify or void the discipline. There was no documentary evidence indicating that the Patrol has issued lesser discipline under like circumstances. The testimony of Dispatcher Windbigler was not supportive of this argument. The situation involving Windbigler was dissimilar; it was an apples to oranges comparison. As an additional factor limiting the comparison is the fact that Windbigler did not have a similar department record to Grievant. Windbigler had not been advised in recent evaluations to be more attentive to radio communications and check her work. Windbigler also provided a credible explanation for her mistake and also corrected the error. Grievant did not "catch" her error.

Windbigler did corroborate the noise and stress of the dispatching job. Lt. Jones and Supervisor Reichelderfer also stated that it is possible to make errors in hearing dispatches. The arbitrator finds that the difficulty of hearing dispatches clearly is an inherent aspect of the job. The need to respond to telephones and prepare multiple computer entries is a job requirement as well. Dispatchers must

train themselves to ensure accuracy of CAD entries and ascertain the correctness of what was in fact heard on the telephone or radio. It is the essence of the job. Excuses about "I thought I heard it" would be more acceptable had Grievant not been counseled on this very matter. She was on clear notice as to her responsibilities in this regard.

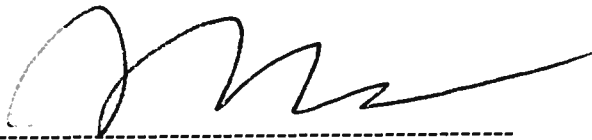
The arbitrator found no mitigation in the Union claims that others could have fixed the error. That is beside the point. It is Grievant's conduct that is in issue. Blame shifting does not solve the problem of Grievant's inattentiveness or negligence.

The Patrol conducted a fair and impartial investigation.

In a factual vacuum the events leading to the ten day suspension would not merit such a severe discipline. But a disciplinary progression has been followed. Grievant had ample notice through counseling, training, evaluations and a prior discipline of the need to check her work and perform accurate CAD entries. There was nothing novel about this CAD requirement. There were no extenuating circumstances in this situation. The Patrol could have issued a five day suspension which would be a natural progression of the three day suspension for neglect of duty. It chose not to do so. The arbitrator does not find that the discipline was as excessive under all the circumstances as to be arbitrary, capricious, and discriminatory or an abuse of discretion. The Patrol's decision about the level of discipline will not be overturned.

AWARD

The grievance is denied.



Sandra Mendel Furman, Arbitrator

Issued in Columbus, Ohio on September 7, 2010